

110 FERC ¶ 61,399
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Dominion Cove Point LNG, LP

Docket No. RP05-213-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEET
SUBJECT TO CONDITIONS

(Issued March 31, 2005)

1. On March 1, 2005, Dominion Cove Point LNG, LP (Dominion Cove Point) filed a revised tariff sheet¹ to institute its annual fuel retainage percentage adjustments to be effective April 1, 2005. Dominion Cove Point proposes to deviate from the calculation methodology specified in its tariff in order to compensate for what it asserts is an anomalous result which occurs when the tariff methodology is employed. The Commission accepts and suspends the proposed tariff sheet to be effective April 1, 2005, subject to refund, to the outcome of the proceeding in Docket No. RP04-197, *et al.*, and to additional Commission action following the filings directed herein.

I. Description

2. Dominion Cove Point files annually to adjust the fuel retainage percentages for its services. Fuel retainage percentages are calculated separately for storage services under Rate Schedules FPS-1, FPS-2, FPS-3 and LTD-1 and LTD-2, and for transportation services under Rate Schedules FTS and ITS.² In addition, Dominion Cove Point assesses a retainage percentage against LNG volumes held by FPS customers which remain in storage beyond a deadline specified in the tariff. In calculating the fuel retainage percentages for its services for the coming year, Dominion Cove Point takes into account Lost and Unaccounted for (LAUF) volumes.

3. In this filing, Dominion Cove Point proposes to deviate from the methodology it normally uses to calculate fuel retainage percentage rates in order to compensate for what it asserts is an anomalous result in this year's calculations. For the prior 12-month

¹ Fifth Revised Sheet No. 10 to FERC Gas Tariff, Original Volume No. 1.

² The terms governing retainage are contained in section 1.41 of the General Terms and Conditions (GT&C) of Dominion Cove Point's tariff.

period, upon which these calculations are based, Dominion Cove Point states that it had a 0.0 percent retainage rate for transportation services and thus withheld no gas for fuel from customers under Rate Schedules FTS and ITS. However, using its normal calculation methodology Dominion Cove Point states that it would be found to have overrecovered 1,302,805 Dth from transportation customers during 2004. Thus, in the absence of the adjustment Dominion Cove Point proposes, it states that it will have to return that amount (plus a carryover amount from 2003) to transportation customers in the form of a negative surcharge, even though Dominion Cove Point did not withhold any gas as fuel retainage in 2004 from those customers. Dominion Cove Point states that it is not sure of the reason for this anomalous result, but has been investigating and believes it may be due to faulty metering. Under its storage rate schedules during 2004 Dominion Cove Point states that it experienced an underrecovery of its fuel retainage of 458,594 Dth at a retainage percentage of 2.8 percent.

4. Dominion Cove Point proposes to remedy this anomalous result by making an adjustment to LAUF in the calculation of the fuel retainage percentages for both transportation and storage rate schedules by continuing with a 0.0 percent fuel retainage rate for transportation rate services for 2005, and reducing the retainage rate for storage services to 2.7 percent. Dominion Cove Point maintains that based on this adjustment it will absorb 11,900 Dth that it would otherwise collect from its customers. With these adjustments, Dominion Cove Point states that it will not be required to return gas which it could not possibly have accumulated through retainage from transportation customers. Dominion Cove Point requests a waiver of its tariff to permit it to make these adjustments to its fuel retainage calculations and thus to compensate for the anomalous result which may be due to faulty metering.

5. Dominion Cove Point acknowledges that it first observed these anomalous results during February 2004 and states that it has been auditing its meters since. Dominion Cove Point reports that to date it has not drawn any definitive conclusions about the cause of the irregular results, but believes the fault may lie with the ultrasonic sendout meters located in the LNG plant. Dominion Cove Point states that until it resolves the cause of the anomaly it should be permitted to make adjustments to its calculation of fuel retainage percentages to eliminate these results.

II. Notice and Protests

6. Public notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 12,465 (2005), with comments interventions and protests due as provided for in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2004)), all timely-filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on the existing parties. Statoil Natural Gas LLC (Statoil) filed a protest and BP Energy

Company and Shell NA LNG LLC (BP/Shell) filed a joint protest. Dominion Cove Point and LTD-1 Shippers filed answers.³

7. BP/Shell request that the Commission direct Dominion Cove Point to recalculate its fuel retainage percentages based on calculations that BP/Shell propose and request that a technical conference be convened to allow Dominion Cove Point to clarify the parties' concerns. BP/Shell also asserts that Dominion Cove Point should be required to submit additional information concerning its filing prior to a technical conference. Statoil supports BP/Shell's request.

8. BP/Shell and Statoil also protest that Dominion Cove Point's projection of 2005 monthly injections into storage by LTD-1 customers is too low and requests that Dominion Cove Point be required to recalculate based on the nominations the LTD-1 shippers have told Dominion Cove Point they will make in 2005. BP/Shell and Statoil contend that Dominion Cove Point based its 2005 projections on 2004 levels and, therefore, projected monthly injections of 17,865,651 Dth. In contrast, BP/Shell and Statoil state that they have notified Dominion Cove Point that they intend to nominate approximately 22,500,000 Dth per month during 2005.

9. BP/Shell and Statoil argue that Dominion Cove Point should be required to remove certain amounts from its fuel retainage calculations which were contested in Dominion Cove Point's 2004 fuel filing in Docket No. RP04-197, *et al.* and which remained unresolved at the time the instant filing was made. The Commission has since issued an order in Docket No. RP04-197, *et al.*⁴ and its impact on the instant filing is discussed below.

10. BP/Shell protests the fact that Dominion Cove Point discovered the anomalous results in retainage in February 2004 and has still not reached a conclusion as to its causes, nor has Dominion Cove Point yet had its sendout meters tested. BP/Shell requests that the Commission direct Dominion Cove Point to undertake a full range of facility testing as soon as possible to determine the cause of the anomalous results.

11. BP/Shell also protests the inadequacy of the supporting data and documentation Dominion Cove Point provided to support its calculations and its adjustment proposal. BP/Shell requests that the Commission require Dominion Cove Point to provide additional information. Finally, both BP/Shell and Statoil request that the Commission convene a technical conference to explore the issues raised by Dominion Cove Point's filing.

³ Waiver of 18 C.F.R § 385.213(a)(2) (2004) is granted as the answer may aid in the resolution of the issues raised by the filing.

⁴ *Dominion Cove Point LNG, LP.*, 110 FERC ¶ 61,366 (2005).

12. Dominion Cove Point filed an answer to the protests in which it argues that, although it believes that its proposed fuel filing is just and reasonable, it agrees to refile its fuel retainage percentages based on BP/Shell's methodology, with certain adjustments. Dominion Cove Point states that, in agreeing to do so, it does not endorse BP/Shell's methodology; nor does it establish any precedent.

13. Specifically, Dominion Cove Point agrees in its answer to use the 2005 projected nominations of the LTD-1 shippers of 22,500,000 Dth per month, but states that BP/Shell underestimated 2005 storage gas usage and thus requires an adjustment. Dominion Cove Point states that BP/Shell failed to take into account that greater injections necessarily result in greater fuel usage. Dominion Cove Point states that it has corrected for this error and the resultant storage service fuel percentage is 2.4 percent which is 0.3 percent lower than that contained in the filing before the Commission here.

14. Dominion Cove Point also made two corrections to BP/Shell's calculation of transportation service fuel retention percentages which results in the same retainage figure that is contained in the instant filing, 0.0 percent. First Dominion Cove Point increases the denominator for calculating the transportation fuel retention percentage to account for the higher volume of LNG imports. It states that those increased volumes will be transported through Dominion Cove Point's transmission line. Second, Dominion Cove Point increases the fuel use at its Pleasant Valley compressor station to account for the increased throughput. The resulting fuel retainage is 0.0 percent, which is the same as that proposed in the instant filing, whereas BP/Shell's calculation resulted in fuel retainage of negative 0.1 percent.

15. Dominion Cove Point maintains that it has reasonably responded to the positive LAUF on its system. Dominion Cove Point argues that it began a review of its metering facilities to determine if any adjustments were required, and has made adjustments where necessary. In addition, Dominion Cove Point states that it plans to install new ultrasonic sendout meters and to calibrate the old ones for possible future use. Finally, Dominion Cove Point argues that it has provided adequate information in support of its filing, and that the additional information requested by BP/Shell in their protest is not necessary for the Commission to find that its proposal is just and reasonable. Furthermore, it states, in light of its concession to adopt the BP/Shell calculation with adjustments, providing additional information is no longer relevant. Dominion Cove Point states that until its replacement and calibration of sendout meters is completed it would have no further insight into what impact the sendout meters had on the positive LAUF balance, and thus a technical conference would serve no purpose.

16. LTD-1 Shippers responded to Dominion Cove Point's answer and included a revised set of spreadsheets based on the modifications filed therein. LTD-1 Shippers state they accept Dominion Cove Point's use of a 2.51 percent fuel use percentage projection for 2005 and its increased transportation throughput and usage projections for

2005. However, LTD-1 Shippers disagree with Dominion Cove Point's inclusion of the disputed underrecoveries from its 2004 fuel tracker in Docket No. RP04-197, *et al.* and, therefore, have removed the 822,792 Dth of the Deferred Underrecoveries. LTD-1 Shippers assert that removing this underrecovery from the analysis results in a storage fuel retainage percentage of 2.1 percent and a transportation fuel retainage percentage of 0.0 percent.

17. LTD-1 Shippers dispute Dominion Cove Point's characterization of its tariff provisions on meter errors. LTD-1 Shippers argue that the tariff, although permissive and imprecise, does provide that errors less than two percent may be taken into account. LTD-1 Shippers request that the Commission ensure that Dominion Cove Point identifies and resolves the issues which resulted in this anomalous fuel result and that Dominion Cove Point keeps its customers and the Commission informed as to its findings. LTD-1 Shippers assert that Dominion Cove Point's offer to provide updated metering analysis is insufficient and maintain its request for a technical conference.

III. Discussion

18. Based upon a review of the filing, the Commission finds that the proposed tariff sheet has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. Accordingly, the Commission will accept the tariff sheet, suspend it to become effective April 1, 2005, subject to refund, to the outcome of the hearing and settlement procedures established in Docket No. RP04-197, *et al.*, and Commission action on Dominion Cove Point refiling its annual fuel retainage percentage adjustment filing within 30 days to institute the changes directed below.

19. As a first step, the Commission accepts Dominion Cove Point's answer insofar as Dominion Cove Point agrees to refile its fuel retainage percentages to incorporate the BP/Shell methodology with the adjustments proposed by Dominion Cove Point. Utilizing the 2005 nominations of LNG cargoes is a more accurate measure of the injections that will actually take place. Dominion Cove Point is directed to refile its revised fuel retainage percentages set forth in its answer within 30 days of the date of this order.

20. BP/Shell and Statoil request that the Commission direct Dominion Cove Point to eliminate from its fuel retainage calculation certain cost items which were contested in the underlying filing in Docket No. RP04-197, *et al.* and which were unresolved at the time the instant filing was made. Since then, however, the Commission has issued an order in that proceeding in which it directed Dominion Cove Point to recalculate the underlying filing to exclude 288,220 Dth that is being deferred until Dominion Cove Point's next general rate case. Therefore, the Commission directs Dominion Cove Point to revise the instant filing within 30 days to account for the revised 2004 fuel retainage percentages.

21. Additionally, in the order in Docket No. RP04-197, *et al.*, the Commission established hearing and settlement judge procedures to address LTD-1 Shippers concerns regarding Dominion Cove Point's inclusion of a 2002 underrecovery in its 2004 retainage percentage. At the outcome of that proceeding Dominion Cove Point is directed to file a revised tariff sheet reflecting any necessary adjustments to its 2005 retainage calculation. Acceptance of the instant filing is conditioned on the outcome of that proceeding.

22. The Commission declines to convene a technical conference or to require the additional information or changes sought by BP/Shell and LTD-1 Shippers at this time, but defers final action on those requests and any outstanding issues related thereto pending additional comments to be filed by the parties as discussed below. However, the Commission directs Dominion Cove Point to file monthly a report detailing what steps it has taken and is taking to correct its metering problems, including when these actions were taken in the past and when these actions are expected to be taken in the future. The report should include the steps to be taken to replace and recalibrate the ultrasonic sendout meters and the estimated dates these actions will occur. The Commission directs Dominion Cove Point to file the first report within 30 days of the date of this order, and to file monthly updates to the report.

23. The Commission will hold further action on this filing in abeyance pending additional comments by the other parties to this proceeding. The Commission accepts LTD-1 Shippers answer and directs the other parties to incorporate comments on Dominion Cove Point's proposals embodied in its answer to the protests into comments on the compliance filing which the Commission has directed Dominion Cove Point to file within 30 days. Following receipt of those comments the Commission will issue an order on the compliance filing as well as on any issues remaining in this proceeding.

24. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.⁵ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.⁶ Such circumstances exist here. Therefore, the Commission will accept and suspend the proposed tariff sheets to be effective April 1, 2005 subject to refund, to the outcome of the proceeding in Docket

⁵ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

⁶ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (minimum suspension).

Docket No. RP05-213-000

7

No. RP04-197, *et al.*, and to additional Commission action following the filings directed herein.

The Commission orders:

(A) The proposed tariff sheet identified in footnote 1 is accepted and suspended to become effective April 1, 2005, subject to refund, to the outcome of the proceeding in Docket No. RP04-197, *et al.*, and to additional Commission action following the receipt and review of the filings directed herein.

(B) Dominion Cove Point is directed to file revised tariff sheets with accompanying working papers within 30 days of the date of this order to reflect the adjustments discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.